United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-1725

United States Court of Appeals

FOR THE SECOND CIRCUIT

JOYCE J. BEAM,

Plaintiff-Appellant,

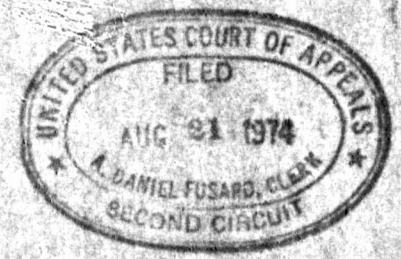
vs.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES, AND PILOTS; THOMAS F. O'CALLAGHAN, as President of the International Organization of Masters, Mates and Pilots; MASTERS, MATES AND PILOTS WELFARE PLAN; STEPHEN P. MAHER, as Administrator of the Masters, Mates and Pilots Welfare Plan; H. M. STEGALL, as Chairman of the Board of Trustees of the Masters, Mates and Pilots Welfare Plan; and MARTIN F. HICKEY, as Secretary of the Board of Trustees of the Masters, Mates and Pilots Welfare Plan,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York Honorable Lawrence W. Pierce, Judge

BRIEF FOR APPELLEES



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No. 74-1725

UNITED STATES

C O U R T O F A P P E A L S

FOR THE SECOND CIRCUIT

JOYCE J. BEAM,

Plaintiff-Appellant

vs.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS; THOMAS F. O'CALLAGHAN, as President of the International Organization of Masters, Mates and Pilots; MASTERS, MATES AND PILOTS WELFARE PLAN; STEPHEN P. MAHER, as Administrator of the Masters, Mates and Pilots Welfare Plan; H.M. STEGALL, as Chairman of the Board of Trustees of the Masters, Mates and Pilots Welfare Plan; and MARTIN F. HICKEY, as Secretary of the Board of Trustees of the Masters, Mates and Pilots Welfare Plan,

Defendants-Appellees

BRIEF OF APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

HONORABLE LAWRENCE W. PIERCE, Judge

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The appellant is the widow and beneficiary of Russell Beam, who was an employee eligible for benefits

under the Rules and Regulations of appellee, the Masters, Mates and Pilots Welfare Plan. The Plan itself is a jointly-administered trust established under the provisions of Section 302(c)(5) of the Labor Management Relations Act, 29 USC §186(c)(5), to provide welfare benefits for licensed deck officers in the American Merchant Marine. It provides under certain strict limitations more fully set forth in the regulations (App. p.18a) a benefit for death from accidental means.

Russell Beam was severely burned in a motel fire where he was said to have been on an "alcoholic binge" and died eighteen days later in the hospital to which he had been taken. The death certificate officially reported the cause of death as "acute pancreatitis" due to "acute and chronic alcoholism", and stated that accidental burns had been a contributing factor leading to the actual cause of death.

Based upon the death certificate, the trustees of the Plan had certain questions, and subsequently the attending physician, at their request, elaborated upon the certificate to explain how the burns had been a contributing factor.

Upon the ceath certificate, this explanation and additional views by their own doctor, the Trustees denied the accidental death benefit claim by Mrs. Beam. She sued

in the District Court, which granted summary judgment upon motion of the defendants.

It is submitted that the following issues are presented by the appeal.

(1) Whether the District Court erred in deciding that it was unnecessary for proper disposition of the case to determine that federal jurisdiction under Section 301 of the Labor Management Relations Act obtains in an action brought for recovery of accidental death benefits allegedly due to a beneficiary of a welfare plan trust established pursuant to Section 302(c)(5) of the Act.

(2) Whether there was any material issue of fact underlying the incident involved or any material issue of fact with respect to the exercise of their authority by the Trustees in denying the claim.

(3) Whether the decision of the Trustees of the Welfare Plan to deny benefits under the accidental death clause was arbitrary, capricious or unreasonable, or not supported by the evidence before them.

STATEMENT OF THE CASE

A. Nature of the Action

In general, the appellees accept appellant's statement of the nature of the action, except for the entirely

gratuitous characterization of the Welfare Plan as "essentially a pension, sickness and accident plan." (Br., p.4). This description, which has no basis in fact, is obviously an attempt to support Mrs. Beam's main contention that the merits of her case must be decided as if she had bought a policy from an insurance company, and shows a lack of comprehension not only of the wide range of benefits actually provided by the Plan, but of the fiduciary aspects and requirements in a trust established pursuant to 29 USC §186.

B. Summary of Facts.

The summary of facts submitted by appellant is generally acceptable, with a few minor exceptions:

(a) the appellant fails to note that the District Court in its opinion (App., p.48a) found the underlying facts to be undisputed since no objections had been made or other facts injected on the motion, and that they were properly deemed to be undisputed by reason of her failure to file a statement of material facts upon the motion for summary judgment as required by Local Rule 9(g) of the District Court. The present apparent attempt to becloud certain facts alleged in the moving affidavit of Mr. Maher by characterizing them as "according to Mr. Maher" or by

raising a point that Mr. Maher had not fully stated "where, when and how" the trustees had decided to deny the claim (Br., p.10 andll) must be disregarded.

(b) Appellant also states that Dr. Logue's opinion, which was considered and evaluated by the trustees, is the expression of a view that it was impossible to decide whether or not the death was accidental. (Br.,p. 11). Of course, Dr. Logue's statement (App., p. 23a) speaks for itself, but a fairer interpretation of the entire letter is that, upon the record, he found it impossible to determine that the burns had anything to do with the death.

(c) At page 11 of her brief, appellant states that "The Plan contains several provisions which defendants contend, and which the District Court found, place actions of the trustees in granting or denying benefits almost beyond the scope of judicial review." Appellees are unaware of making any such contention, or of such a finding by the District Court. They also fail to understand the legal meaning of "almost" as used by appellant in discussing the scope of judicial review.

ARGUMENT

(1). The District Court correctly decided that it was unnecessary to find that federal jurisdiction under 29 USC §185 obtains in the particular circumstances of this case.

(a) Appellant had alleged jurisdiction herein based upon Section 301 of the Labor Management Relations Act, 29 USC § 185, and upon diversity of citizenship. The Act provides in part:

> "(a) Suits for violations of contracts between an employer and a labor organization *** or between such labor organizations, may be brought in any district court having jurisdiction of the parties."

The present action is merely a claim to recover certain welfare benefits provided by a trust established under Section 302 of the Act. Appellant has never alleged a violation of any contract between employers and a labor organization, or even any violation going to the basic structure of the trust under the Act. The complaint merely alleged that the trustees had acted improperly in denying the claim.

Contrary to appellant's assertion, there has been no emerging pattern of decisions holding that every claim

of right involving a labor management trust falls within the ambit of Section 301. Most of the cases cited by Mrs. Beam in support of this proposition, headed by Smith v. Evening News Association, 371 US 195; 83 S. Ct. 267; 9 L.Ed2d 246 (1962), all involve a more or less distinct violation of a collective bargaining agreement and cannot be controlling here. As the District Court pointed out (App., p.43a) there is a line of cases headed by Roark v. Boyle, 439 F2d 497 (D.C. Cir. 1970); see also Moglia v. Geoghegan, 403 F2d 110 (CA2, 1968, in which jurisdiction has been allowed where there is a failure to meet the structural requirements of eligibility of a labor management trust, but these cases do not support an argument that a federal court should have jurisdiction when the only issue involves the peculiarly individual circumstances in the death of an eligible employee of a welfare trust.

Moreover, other cases seem to limit jurisdiction when there is no question of the applicability or desireability of federal labor law at issue. In Insley v Joyce, 330 F. Supp. 1228 (N.D. Ill. 1971), a clear distinction was noted between the cases involving basic eligibility requirements and cases where the jurisdiction claimed related to supervision of the day-to-day administration of trust funds. Similarly, a distinction was found in Moglia v Geoghegan, supra. The courts have also looked

to state jurisdiction where the state has taken over the supervision of trust funds. O'Rourke v Breakstone Bros. Inc., 218 F. Supp. 648 (S.D. N.Y. 1963). Clearly, appellant's argument for jurisdiction has not been generally accepted by the courts.[1/]

In this area of strong doubt as to the applicability of Section 301 of the Act as a basis for federal jurisdiction of an action brought to recover on an accidental death benefit provided by a jointly-administered trust fund, the District Court determined it was unnecessary to decide the point since there was undisputed jurisdiction under diversity of citizenship. 28 USC § 1332, and that the applicable standard of review of fiduciaries was the same under federal or state law.

(b) There appears to be no question of the applicable state law. In Gitelson v. Dupont, 17 N.Y. 2d 46 (1966), the trustees of a pension plan had denied a pension to an

---

1/ Mrs. Beam has referred, dehors the record to the identical action she originally instituted in the District Court for Oregon. She failed to mention that among the grounds for dismissal was the determination that there was no jurisdiction under 29 USC §185, and that the Plan was not an insurance company subject to rules and precedents covering insurance claims.

applicant because, upon the record, they found him "dishonest" within the provisions of the trust. The New York Court of Appeals stated:

> "The interpretation and construction of such documents as contracts and trust instruments are properly treated as questions of law and are reviewable by this court."

The court dismissed the attack upon the decision of the trustees on the ground that

> "the burden was upon the claiment to show that the board's ruling was motivated by bad faith, or arrived at by fraud or arbitrary action.... (citing cases)..The rule then is that, without a showing of deriliction on the part of the board, its decision is final and conclusive."

The Court then reviewed the reasons why it found the action of the trustees in interpreting the trust provisions and applying them to the facts to have been reasonable.

In her brief, Mrs. Beam argues that she has been prejudiced because if federal jurisdiction did apply under 29 USC § 185, or otherwise, there would be some special undescribed federal substantive law which would govern. It is true that there is justification that 29 USC § 185 indicated a "policy of having collective bargaining agreements accomplished under a uniform body of federal substantive law", Smith v Evening News Association, supra; or that federal labor policy should extend to the basic eligibility structure of trusts established under 29 USC § 186(c)(5), Rourk v. Boyle, supra; Moglia v. Geoghegan, supra. However, from the beginning the

federal courts have recognized the peculiarly fiduciary relationships established by a jointly-administered trust mandated by the Act. In Lewis v Benedict Coal Corp., 361 U.S. 459, 80 S. Ct. 489, 4 L. Ed.2d 422 (1960), the court referred to the statutory authority requiring a trust, the trust instrument establishing the labor management pension fund and stated "appellant's suit, therefore, is one to establish his status and rights as a beneficiary." This was followed by Dante v Lewis, 312 F.2d 545 (D.C.Cir. 1962), and by the comprehensive position taken in Kosty v. Lewis, 319 F.2d 744 (D.C. Cir. 1963). Here where it was pointed out that the trustees had been given full authority to determine the provisions of the plan, the court approved the determination of the trial court that the issue presented by the claim was whether the trustees' action had been arbitrary or capricious in the light of the facts deduced. The court said:

> "This conclusion is fully in accord with the definition of the scope of review articulated in Dante v. Lewis *** Trustees, like all fiduciaries, are subject to judicial correction upon a showing that they have acted arbitrarily or capriciously towards one of the persons to whom their trust obligation runs."

See Moglia v. Geoghegan, supra

It appears , therefore, that the scope of the judicial rule, which the district court actually applied,

would necessarily have been the same even if the court had made a determination that federal jurisdiction under 29 USC §185 applied in the particular facts of this case.

(2) There is no material dispute as to the underlying facts of the death or as to the facts of the exercise of the trustees' authority.

Although Mrs. Beam in her brief stated that one of the issues involved here was whether there were material disputes of fact or of mixed fact and law which precluded summary judgment, at no stage has she indicated or pointed out any such dispute. Of course, Mrs. Beam disputes the law, but the pleadings and papers on the motion are singularly free of any material dispute of fact involving the claim. It is important to emphasize again that at no time in the proceedings for summary judgment did appellant deny or controvert any allegation of fact in the pleadings or the affidavit in support of the motion or in its exhibits. The only factual material submitted by Mrs. Beam in support of her claim was the death certificate, which stated unequivocably that the cause of death was acute and chronic pancreatitis due to acute and chronic alcoholism, and that accidentally incurred burns were only a contributing factor. The death certificate also indicated that an autopsy had been made, specifically confirming the cause of death.

Following receipt of the death certificate, the trustees requested further advice from Dr. Parshley, the attending physician who had signed the death certificate. His letter of April 15, 1971 in reply was made a part of the moving papers, (App.,p.21a). Analysis shows that this letter, in the first two paragraphs, contained a factual report of decedent's basic condition and the course of his condition and treatment in the hospital. This part of Dr. Parshley's letter and the death certificate constitute the only real facts in the case, and there is certainly no dispute with respect to them.

This is not to minimize the remainder of Dr. Parshley's letter in which he gave his opinion of the manner he believed the accidental burns contributed to the acute pancreatitis from which he died. This opinion was, of course before the trustees for consideration, just as was the opinion of Dr. Logue, the trustees' consulting physician. As part of the record here they can be considered in determining the reasonableness of the trustees' determination. The only part of the record here, which was admittedly not before the trustees, is an additional letter from Dr. Parshley submitted by Mrs. Beam on the motion, where he gives an opinion appearing to indicate a relatively greater contribution by the burns to the ultimate cause of death, but which at the same time reaffirms

the basic facts of the death.

In another attempt to show a dispute as to the actions of the trustees, Mrs. Beam improperly raises on this appeal the question that the record does not divulge the formality and details of the decision of the trustees in denying the claim. No objection was ever made in the pleadings or upon the motion, and she clearly does not object for the same reasons to the decision of the trustees in approving payment to her of the regular death benefit.

(3) Other arguments made by appellant do not vitiate the summary judgment proceedings.

The appellant has also made a number of assertions, generally attacking the right of the trustees or the appropriateness of their actions to determine whether or not a welfare benefit should be paid under any circumstances. Appellant argues that when she raises any possible doubt about the right of the trustees (no matter howweakly or how tenuously advanced the doubt is) then summary judgment is improper. The fallacy of these assertions is readily seen.

The first provisions relating to the authority of the trustees are contained in Article IV, Sections 1 and 2 of the "Agreement and Declaration of Trust" establishing theMM&P Welfare Plan. (App., p.14a). Here the trustees

have full authority to determine all questions of the "nature, amount and duration of the benefits" and all questions of coverage and eligibility." The "Rules and Regulations" of the Plan establish the benefits, and in Article XIV thereof (which was added when the Plan first assumed direct determination and payment of benefits without the intervention of an insurance company and an insurance policy covering benefits) it is provided:

> "*** the Trustees expressly reserve the right in their sole discretion and without notice to Employees, Employers, the Union or others affected thereby, but on a non-discriminatory basis ***
> ****
> (d) to interpret the provisions of these Rules and Regulations."

These provisions granting broad authority appear to be substantially common to all the labor management trusts considered by the courts. The authority given in the Agreement and Declaration of Trust obviously goes to the right to develop a benefit program, and was introduced here mainly to indicate the scope of the authority to promulgage the particular accidental death benefit provisions before the court. Although on the record, Mrs. Beam has not objected to the authority to create the regular and accidental death benefit, in her brief she seems to argue that the authority is too broad to be legal.

Actually, the authority to establish benefits and to determine to pay them is almost a necessity in the cir-

cumstances. If a labor organization or the employers or the employees could object to each item and payment in the benefit program, operation and administration would be a shambles. Moreover, initial authority to determine if benefits should be paid is implicit in the very fact that the trustees in their fiduciary capacity are obligated to pay the benefits specified by the Rules and Regulations. Mrs. Beam argues that the validity of the provisions is questionable because it was never intended to give the trustees "unreviewable discretion." This disregards any consideration of fiduciary law. The question has not risen before because the courts have clearly enunciated their right to judicial review of the actions of trustees. Kosty v. Lewis, supra; Gitelson v. Dupont, supra.

Appellant also alleges that the discretion given by Article XIV of the Rules and Regulations is nullified in individual cases because of the requirement that the discretion be exercised on a"non-discriminatory" basis. Apart from the fact that this argument when applied to the "payment" not "denial" of a particular benefit would effectively eliminate the welfare program, it also shows a lack of knowledge of the administration and processing of welfare claims. The requirement of non-discrimination is almost redundant because by reason of the fiduciary

relationship, the test most often called into play in the day-to-day processing of individual claims is whether or not there would be discrimination.

It is unnecessary to consider seriously the appellants claim that the discretionary features of the Plan are illegal because of the requirement in Section 302(c)(5)(B) of the Act that "the detailed basis on which the payments are to be made is specified in a written agreement." This assertion that the statutory clause somehow establishes undefined standards for trust instruments and trustees is unsupported by the wording itself, the legislative history or any cases. Appellant admits the point has not even been raised in any case.

Mrs. Beam does quote (Br., p.28) from Sturgill v. Lewis, 372 F.2d 400 (D.C. Cir. 1966), apparently to imply that she has been illegally prevented from presenting, or never given an opportunity to bring out, all the evidence. As has been noted before, Mrs. Beam never presented any support for her claim other than the death certificate.[2/]

2/ The MM&P Plans have a well-established practice which allows claimants to appeal for reconsideration from any decision of the Trustees, to appear in person or by atorneys, with a full record of the appeal. Mrs. Beam commenced her suit in Oregon in 1971 soon after the trustees' decision, without requesting any reconsideration.

(4) The decision of the Trustees was not arbitrary, capricious or unreasonable and was supported by the evidence before them.

The provisions of the Rules and Regulations under which Mrs. Beam has made her claim for accidental death benefits is contained in Article III, Section 6:

> "Section 6. Death or Dismemberment by Accidental Means.
>
> If an Employee, while eligible hereunder, suffers any of the losses described in Section 7 of this Article, as a result of bodily injuries sustained solely through external, violent and accidental means, directly and independently of all other causes, *** the trustees shall pay *** to the beneficiary, the amount of the benefit specified *** Provided, however, that no payment shall be made for any loss caused wholly or partly, directly or indirectly, by
>
> (a) disease, or bodily or mental infirmity or medical or surgical treatment thereof, ***"
>
> (Emphasis added)

There is no doubt that this constitutes a rigorous requirement, but the words spelling out the need for proof that the loss was the result of bodily injuries sustained "solely through external, violent and accidental means, directly and independently of all other causes" and that no payment would be made for any loss "caused wholly or partly, directly or indirectly, by *** bodily or mental infirmity" are not so complicated that it would be unreasonable for a layman, unaffected by a legalistic approach or pre-conceived ideas of the unfairness of insurance companies under a policy, to interpret them to

mean what they plainly say.

As pointed out previously, the only factual material, actually the only facts before the trustees, submitted by Mrs. Beam was the death certificate (App. p.20a) which clearly stated that the cause of death was "acute and chronic pancreatitis" due to acute and chronic alcoholism. The accidental burns were mentioned merely as an existing significant condition contributing to the death.

In itself, the death certificate clearly provides evidence that death was not caused "solely" by an accident and that the death resulted at the very minimum "partly" or "indirectly" from a bodily infirmity. The Welfare Plan trustees sought a broader basis for judgment and received a report from Dr. Parshley, the attending physician, (App. p.21a) which affirmed the cause of death, but elaborated upon the accidental burns as one of the factors leading up to the fatal illness. The Plan also received the opinion of its own consulting doctor (App. p.23a), who reaffirmed the cause of death, but who stated that the record before him was not sufficient to find that accidental causes were in anyway involved.

These were the facts and opinions upon which the trustees made their decision, and in the light of the benefit provisions of the above-stated Section 6 of the

Rules and Regulations, it is submitted that such determination was not arbitrary or capricious or unreasonable, and that upon the facts submitted for consideration, the incident of death here was correctly found to be within the exceptions in the regulations to an accidental death benefit.

After the commencement of the summary judgment proceedings, appellant submitted with her papers an additional opinion of Dr. Parshley. This report reaffirmed the fact stated in the death certificate that death was caused by acute and chronic pancreatitis to which the decedent was disposed by his acute and chronic alcoholism. In a very negative statement he sought to elevate the importance of the accidental burns as a contributing factor. The District Court found that this additional opinion was not before the trustees and was not relevant, but even if it had been, since it merely restated his previous position, the decision would be the same.

CONCLUSION

For the reasons set forth in this brief, the summary judgment granted by the District Court should be affirmed.

Respectfully submitted,

ALBERT E. RICE

Attorney for Appellees

State of New York)
ss.
County of New York)

Albert E. Rice, being duly sworn, deposes and says: I am attorney for the appellees herein and I reside at 181 Ridgecrest Rd., Briarcliff Manor, N.Y. On the 21stday of August, 1974, I served two copies of the with Brief of Appellees upon Julien, Blitz & Schlesinger, attorneys for the Appellant in this action, at 2 Lafayette Street, New York, N.Y. 10007, the address designated by said attorneys for that purpose by depositing two true copies of same enclosed in a postpaid properly addressed wrapper in an official depositary under the exclusive care and custody of the United States postal service within the State of New York.

Albert E Rice

Sworn to before me this
21st day of August, 1974

Nathaniel D. Sell

NATHANIEL D. SELL
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-0446450
Qualified in New York County
Commission Expires March 30, 1976